

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Jarett	Team: Team # 5	CCRB Case #: 200700622	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/15/2007 7:55 AM	Location of Incident: § 87(2)(b) in front of § 87(2)(b)	Precinct: 88	18 Mo. SOL 7/15/2008	EO SOL 7/15/2008	
Date/Time CV Reported Tue, 01/16/2007 11:51 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/16/2007 11:51 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)		§ 87(2)(b)
§ 87(2)(b)		§ 87(2)(b)
§ 87(2)(b)		§ 87(2)(b)
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§ 87(2)(b)		§ 87(2)(b)
§ 87(2)(b)		§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
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§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Melissa Eger	01980	924351	088 PCT
2. POM Kenneth Juart	28680	928567	088 PCT
3. POM Frank Liuzzi	14670	928651	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Melissa Eger	Abuse: Melissa Eger questioned § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
B.SGT Melissa Eger	Abuse: Sgt. Melissa Eger authorized the frisk of § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
C.SGT Melissa Eger	Abuse: Sgt. Melissa Eger searched § 87(2)(b)	§ 87(2)(b)
D.SGT Melissa Eger	Abuse: Sgt. Melissa Eger searched § 87(2)(b)	§ 87(2)(b)
E.POM Kenneth Juart	Abuse: PO Kenneth Juart searched § 87(2)(b)	§ 87(2)(b)
F.POM Frank Liuzzi	Force: PO Frank Liuzzi used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
G.POM Frank Liuzzi	Abuse: PO Frank Liuzzi searched § 87(2)(b) [REDACTED] [REDACTED]	[REDACTED]

Synopsis

On January 15, 2007, at about 7:55am, § 87(2)(b) at § 87(2)(b) including § 87(2)(b) and § 87(2)(b) were standing inside the public bus stop outside § 87(2)(b) and § 87(2)(b) in Brooklyn, § 87(2)(b). Three members of the 88th Precinct anti-crime team, Sgt. Melissa Eger, Officer Kenneth Juart, and Officer Frank Liuzzi, drove by in an unmarked car, made a U-turn and stopped their car in front of the bus stop and got out and questioned the boys (**allegation a**). The officers separated the boys and immediately frisked them (**allegation b**). Sgt. Eger searched § 87(2)(b) (**allegation c**) and § 87(2)(b) (**allegation d**). Officer Juart searched § 87(2)(b) (**allegation e**). Officer Liuzzi pushed § 87(2)(b) against the wall of the bus stop (**allegation f**) and then searched him (**allegation g**).

§ 87(2)(g)

[REDACTED]

Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old black male who is the father of § 87(2)(b) who is § 87(2)(b), filed this complaint with the CCRB on January 16, 2007 (encl. 8a-f). § 87(2)(b) gave a phone statement on January 22, 2007 (encl. 9a) after receiving two previous phone calls (on January 19, 2007 and January 20, 2007) and a first contact letter (sent January 18, 2007). When § 87(2)(b) gave his phone statement, he said he would call back to schedule an interview. The undersigned investigator called on February 5, 2007 and spoke to his wife who said she would coordinate scheduling and call back. The undersigned investigator called the § 87(2)(b) household and left messages on February 16, 2007, February 21, 2007, February 27, 2007, March 1, 2007, and March 13, 2007. A final contact letter was sent on March 1, 2007. Note, § 87(2)(b) never provided a formal statement.

In § 87(2)(b)'s phone statement, he said that when he was driving his son, § 87(2)(b) and turned onto § 87(2)(b) in Brooklyn, he noticed an unmarked police vehicle (which he recognized because of the multiple antennas) driving slowly ahead of him. § 87(2)(b) drove halfway down the block and made a U-turn to drop off his son on the same side of the street as the bus stop where the other students were waiting. § 87(2)(b) drove about two blocks and looked in his rearview mirror to see if the coach had arrived and saw that the unmarked car was now where the boys were. § 87(2)(b) could not see from his distance if the officers were out of the car.

§ 87(2)(b) drove back to the scene and arrived less than two minutes after § 87(2)(b) had dropped off his son. Two officers were looking at identification when § 87(2)(b) arrived back. One of the male officers

stared at § 87(2)(b) in his car. § 87(2)(b) called to his son, § 87(2)(b) came across the street and said that the officers got out of the car without identifying themselves and said, “You know the drill, anybody got any guns?” and “Anybody got blue steel?” (Blue steel was a reference to firearms.) § 87(2)(b) said that a couple of the boys were pushed up against the glass wall of the bus stop and were pat-frisked. § 87(2)(b) was pat-frisked and an officer lifted up § 87(2)(b) s shirt § 87(2)(b) did not say in his phone statement if § 87(2)(b) explained to him which officer did this). § 87(2)(b) did not observe any of this. The officers appeared to be reviewing something, possibly the identification they had collected, while § 87(2)(b) spoke to his son. Less than a minute later, § 87(2)(b) the basketball coach, arrived. § 87(2)(b) saw the boys explain to § 87(2)(b) what had happened and saw § 87(2)(b) drive away, but § 87(2)(b) did not follow § 87(2)(b) § 87(2)(b) obtained the license plate number for the car: § 87(2)(e).

§ 87(2)(b)
§ 87(2)(b) a 5’11” 240 pound black male who is § 87(2)(b) old and § 87(2)(b) filed a duplicate complaint for this case (20070736) on January 17, 2007 (encl. 8a-f). § 87(2)(b) gave a phone statement on January 23, 2007 (encl. 9b) and was interviewed at the CCRB on February 2, 2007 (encl. 9c-h).

§ 87(2)(b) s statement was consistent with § 87(2)(b) s. § 87(2)(b) contributed the following details. When he arrived at the scene, § 87(2)(b) saw § 87(2)(b) and § 87(2)(b) § 87(2)(b) saw that one of the male officers (he could not recall which), was standing very close to either § 87(2)(b) or § 87(2)(b).

When § 87(2)(b) first observed the scene he continued to drive by and heard one of the students say, “There’s § 87(2)(b) there!” § 87(2)(b) made a U-turn and came back. § 87(2)(b) rolled down his passenger window and honked his horn. Two of the officers had already gotten in the police car and a third was getting in. Officer Frank Liuzzi (identified through investigation) rolled down the driver’s side window and § 87(2)(b) asked him what was going on. Officer Liuzzi told § 87(2)(b) that the students were congregating and the officers were looking for steel. Officer Liuzzi rolled his window back up, the traffic light changed, and he drove away. The entire interaction between Officer Liuzzi and § 87(2)(b) lasted about 10 seconds. § 87(2)(b) asked his students what had happened and they explained that the officer had driven by, made a U-turn and an abrupt stop, got out of their vehicle, and began to frisk and search them without identifying themselves as officers. Later in the morning when § 87(2)(b) spoke to the boys again, § 87(2)(b) said that when the officers first got out of the vehicle one of the officers put his hand into § 87(2)(b) s pocket and § 87(2)(b) asked him what he was doing and the officer grabbed § 87(2)(b) by his collar and pushed him against the glass wall of the bus stop and said, “You’re not going to win this one.” § 87(2)(b) only spoke to the students for 10-12 seconds before telling them he would find out what was going on.

§ 87(2)(b) made a left turn behind the police car and flashed his lights and beeped his horn and followed the officers for about three blocks. § 87(2)(b) stopped his car and got out and the officers got out. Officer Kenneth Juart (identified through investigation) stood near the passenger door and Sgt. Melissa Eger (identified through investigation), stood near the back door. § 87(2)(b) identified himself as § 87(2)(b) and asked what had happened and explained that the students were upset. The officers said, “They were congregating, we were searching for steel. You know how it is in high schools.” § 87(2)(b) said that the boys were only § 87(2)(b) old. Sgt. Eger said, “When they’re congregating like that, with all the things that are happening in schools, we’d rather be safe than sorry.” § 87(2)(b) said, “Well that gives you the right to search them?” Sgt. Eger said, “No, we didn’t search them, we frisked them.” § 87(2)(b) said, “Well that’s a form of harassment. These are young kids.” Officer Liuzzi said, “Well you have the right to your opinion.” § 87(2)(b) reiterated that it was harassment, and after 15-20 seconds, the officers abruptly turned around and got back in their vehicle and left the scene.

When § 87(2)(b) returned to § 87(2)(b), § 87(2)(b) s father came over and told him what he witnessed and that he had gotten the license plate number of the vehicle. § 87(2)(b) saw that § 87(2)(b) and her son § 87(2)(b) § 87(2)(b), were still seated in a car § 87(2)(b) had noticed in the parking lot when he first arrived at the incident scene.

§ 87(2)(b)

§ 87(2)(b) a 5'9" 150 pound Hispanic male who was § 87(2)(b) old at the time of the incident, was interviewed at the CCRB on March 22, 2007 (encl. 9i-n). § 87(2)(b) participated in a follow-up phone call on October 17, 2007 (encl. 9l).

On January 15, 2007, at about 7:55am, § 87(2)(b) was waiting outside § 87(2)(b) on § 87(2)(b). § 87(2)(b) was waiting inside a bus stop vestibule with § 87(2)(b). They were waiting for § 87(2)(b).

§ 87(2)(b) was wearing grey-and-black sweatpants, a black hooded sweatshirt, sneakers, and a black wool jacket with six buttons down the center that went to his mid-thigh. § 87(2)(b) was with § 87(2)(b) and possibly § 87(2)(b). § 87(2)(b) was the last of the group to arrive, although he had arrived at about the same time that § 87(2)(b)'s father dropped § 87(2)(b) off. § 87(2)(b) drove away. It was a cold day, so the boys were standing against the wall of the bus stop. § 87(2)(b) had his headphones on and was listening to music. Some of the boys were talking about basketball. No one was making strange movements. Everybody was "half asleep because it was early."

§ 87(2)(b) had been waiting about 5 minutes when a black or dark blue Impala passed by. They always look at cars driving by, so they watched it drive by. The car was driving at a normal speed when it first went by, but then started slowing down after it passed them a little bit. About half a block later, the car made a U-turn and pulled up right in front of the boys at the bus stop. § 87(2)(b) did not see it make a U-Turn, but § 87(2)(b) said that the Impala was coming back. They all thought it was § 87(2)(b) coming for practice.

Three people came out of the car, Officer Frank Liuzzi (identified through investigation), who was driving, and Officer Kenneth Juart (identified through investigation), came out of the front seat and Sgt. Melissa Eger (identified through investigation) then came out of the back seat. The boys couldn't see inside the car because it had tinted windows. The officers, who were wearing plain clothes, did not identify themselves as police officers or say who they were at all. Officer Liuzzi, who was described as a white male, 5'11"-6', 160 pounds, muscular, wearing a big black puffy jacket and jeans and boots, who might have had a mustache, and was about 27 years old, asked the boys who they were waiting there for. They said they were waiting for their coach so they could start practice. Officer Liuzzi asked if they had any heavy metal objects on them. Officer Liuzzi grabbed § 87(2)(b) and § 87(2)(b) said, "What are you searching me for?" because he did not know that Officer Liuzzi was an officer and tried to push Officer Liuzzi's arms down. Officer Liuzzi grabbed § 87(2)(b) by the chest area of his jacket and pulled him close to him and said, "It's not going to go your way." § 87(2)(b) said, "All right, all right."

§ 87(2)(b) stated in his CCRB interview that he was frisked and searched by Sgt. Eger, who was described as a white female, 5'6", 135, slim build, light § 87(2)(b) hair in a ponytail, wearing jeans, a black mid-weight [Gore-tex style] jacket, 28 years old. However, in § 87(2)(b)'s follow-up phone call, he stated that he was frisked and searched by Officer Juart and had no physical interaction with Sgt. Eger, who only searched his friend § 87(2)(b). In § 87(2)(b)'s CCRB interview, he stated that first Sgt. Eger checked his front pockets. Sgt. Eger told § 87(2)(b) to pull up his jacket, which he did. Then she patted him down and had him turn around and pulled up his jacket and put her hands on the outside of the waist of his pants and started feeling his jacket. Sgt. Eger patted his coat pockets and put her hands in his pockets. Sgt. Eger did not search his pants pockets. § 87(2)(b) was wearing a backpack, but Sgt. Eger did not check the backpack. Sgt. Eger did not remove anything from § 87(2)(b)'s pockets. Sgt. Eger then searched § 87(2)(b) and also did not remove anything from his pockets. Officer Liuzzi searched someone else, but § 87(2)(b) cannot remember who. Officer Juart, who was described as a white male, 5'11"-6', 165 pounds, slim build (smaller than Officer Liuzzi), light blue jean jacket, jeans, blonde hair, 29 years old, searched about two of the boys, one of whom was § 87(2)(b) but § 87(2)(b) did not notice who was being searched while he was being searched. § 87(2)(b)

§ 87(2)(b)

Officer Juart wasn't talking as much. Sgt. Eger wasn't saying anything. § 87(2)(b) saw a gun on Officer Liuzzi and started to realize they must be officers. § 87(2)(b) did not see anyone wearing a badge, and they did not show anyone a badge.

§ 87(2)(b) did not know how § 87(2)(b)'s father, § 87(2)(b) knew to come back, but § 87(2)(b) came back after § 87(2)(b) was being searched, before Officer Liuzzi and Officer Juart got back in their car. § 87(2)(b) stayed parked across the street and after § 87(2)(b) was searched, he went across the street to speak to his father. They spoke for about 4-5 minutes.

Officer Liuzzi and Officer Juart went back into the car and kept their windows rolled up because it was cold. Sgt. Eger said it would be nice if the boys could give her their ID. § 87(2)(b) did not have his ID with him. The boys who had their IDs gave them to her and § 87(2)(b) believed she wrote down their names on a notepad, although he couldn't see what she wrote, and gave back their IDs. Sgt. Eger did not say why she wanted their IDs and did not say why she was writing their names down. § 87(2)(b) did not tell her he did not have his ID, he did not speak to her. Sgt. Eger got back in the car, about 45 seconds after Officer Liuzzi and Officer Juart got in the car. The officers never identified themselves as officers at any point. They never explained why they were stopping the boys and did not say anything about the stop at all.

It was at this point that the coach, § 87(2)(b) arrived. The officers drove off. The entire interaction lasted about 6-7 minutes. § 87(2)(b) asked what happened. § 87(2)(b) and the other boys explained. § 87(2)(b) drove after the officers and followed them. § 87(2)(b) could not see what happened after they drove away because there is a hill. § 87(2)(b) did not see the officers again.

§ 87(2)(b)

§ 87(2)(b) a 5'10" black male who is § 87(2)(b) was interviewed at the CCRB on April 29, 2007 (encl. 9p-t).

§ 87(2)(g)

§ 87(2)(b) thought that § 87(2)(b) and § 87(2)(b) were at the scene as well. § 87(2)(b) stated that when the boys were waiting in the bus stop, almost all of the boys had their backs to the wall of the bus stop except for two boys (he could not remember which ones) who were standing in front. § 87(2)(b) stated that when the officers first drove by, § 87(2)(b) told him that they were police officers and they shouldn't look or the officers would stop.

§ 87(2)(b) stated that when the officers got out of the car, the boys who had their backs to the sidewalk were going to move to the glass and Officer Liuzzi said, "Don't move, stand still." The officers asked the boys why they were standing there and if they had heard about a robbery or something being stolen from stores and the boys told them no. Although the officers did not identify themselves, § 87(2)(b) did see shields around their necks. § 87(2)(b) saw Officer Liuzzi exchange words with § 87(2)(b). § 87(2)(b) could not recall what exactly they said to each other, but § 87(2)(b) only saw Officer Liuzzi touch § 87(2)(b) in connection to searching him and nothing else; § 87(2)(b) was unable to provide details of the search of § 87(2)(b).

Officer Juart approached § 87(2)(b) and said to take his hands out of his pockets and searched the front pockets of § 87(2)(b)'s pants and § 87(2)(b)'s coat pockets. Officer Juart patted down § 87(2)(b). Officer Juart started searching around § 87(2)(b)'s bottom, and § 87(2)(b) who had had his back against the glass wall of the bus stop, shot his legs forward when Officer Juart touched his bottom. Officer Juart said to § 87(2)(b) "Are you trying to be funny or stupid?" § 87(2)(b) did not respond. Officer Juart then searched § 87(2)(b) and § 87(2)(b) stood and waited.

§ 87(2)(b) stated that Officer Liuzzi wrote down everyone's names when they collected their IDs, although § 87(2)(b) could not see what Officer Liuzzi was writing, and the officers asked for their birth dates as well. § 87(2)(b) said that whoever did not have an ID just told the officers their names. § 87(2)(b) thought that § 87(2)(b)'s father was parked across the street the entire time, but did not see him talk to anyone.

§ 87(2)(b)
§ 87(2)(b) the § 87(2)(b)-old mother of § 87(2)(b) did not witness the incident. However, she did file a complaint on his behalf, which is included in the narrative of the 245 Complaint Report (encl. 8e), in which she stated that § 87(2)(b) was waiting for § 87(2)(b) when three “undercover detectives” in an unmarked car approached him. The officers searched him, went into his pockets, patted his “butt,” called him stupid, and told him to stand up straight, and asked him if he had steel on him.

Results of Investigation

WITNESSES NOT INTERVIEWED

§ 87(2)(b)
§ 87(2)(b) a minor, was to be interviewed in conjunction with his father, § 87(2)(b) whose attempts at contact are listed above.

§ 87(2)(b)
§ 87(2)(b) and § 87(2)(b)
All of the boys involved in the incident were minors. Their residences could not be narrowed down, making a Lexis/Nexis search for their parents, whose names were unknown, impossible. § 87(2)(b)
§ 87(2)(b) When § 87(2)(b) was interviewed, he took business cards and brochures from the undersigned investigator for all § 87(2)(b)
§ 87(2)(b) The only parent to respond was § 87(2)(b), the mother of § 87(2)(b) When § 87(2)(b) and § 87(2)(b) were interviewed, they were also given business cards and brochures to pass out to § 87(2)(b) § 87(2)(b) mentioned to the undersigned investigator in a phone call on March 13, 2007, that when she returned from an extended trip and mentioned to § 87(2)(b) that she would be making an appointment to have her son interviewed at the CCRB, § 87(2)(b) said that he and the parents were now talking to a sergeant at the 88th Precinct about what happened and § 87(2)(b) could talk to that sergeant if she had any questions.

§ 87(2)(b) and § 87(2)(b)
§ 87(2)(b) the mother of § 87(2)(b) may have been sitting in a parked car and witnessed the incident; her contact information was searched for on Lexis/Nexis by Supervisor Bromirski concurrent to reviewing the Investigative Case Plan on March 1, 2007, and there were over 1,000 results, making contact impossible.

POLICE OFFICER STATEMENTS

Sgt. Melissa Eger (88th Precinct), Subject Officer

Memo Book

Sgt. Eger had no entries in her memo book (encl. 10w-x) regarding this incident.

CCRB Interview

Sgt. Eger, a white female who stands at 5’1”, and weighs 118 pounds, was interviewed at the CCRB on June 19, 2007 (encl. 10y-aa).

On January 15, 2007, Sgt. Eger was working as the anti-crime supervisor. Sgt. Eger worked from 5:00am-1:57pm and did not work any overtime. Sgt. Eger was working with Officer Frank Liuzzi and Officer Kenneth Juart. Sgt. Eger was dressed in plain clothes and assigned to an unmarked motor vehicle, but could not recall the car number or make and model.

At about 7:55am, Sgt. Eger, Officer Liuzzi and Officer Juart were patrolling the area of § 87(2)(b) and § 87(2)(b) Sgt. Eger stated that they had some reports of gang assaults and robberies in school areas but was unable to provide specifics: Sgt. Eger could not recall if there were reports for that day, although there had been some incidents earlier in the week in the precinct where kids were getting assaulted; Sgt. Eger said that the descriptions were just of youths and did not recall anything specific; Sgt.

Eger could not recall if specific schools were mentioned, but stated that it was in and around that area, not at that school itself, but the surrounding area; Sgt. Eger had not had any assaults in that school on that day; Sgt. Eger could not recall if earlier in the week there had been any incidents at § 87(2)(b). Sgt. Eger has been patrolling in that area about a year prior to this incident. Sgt. Eger had made stops in and around that area, but Sgt. Eger could not recall specific incidents with students from that school.

The officers observed 5-8 males standing on the side of § 87(2)(b) on § 87(2)(b) and § 87(2)(b). Sgt. Eger could not recall who observed the situation first. The officers drove by and they all found it suspicious.

The boys were congregating near the bus stop, § 87(2)(b), in a full circle and they were wearing jackets. When Sgt. Eger was shown the 250 report that stated that they were wearing “clothes and disguises commonly used in the commission of crime,” Sgt. Eger explained that they were wearing jackets and layers. There were two males who were looking around and looking behind them. There were a couple of males on the outside of the circle, standing off a little bit, looking back and looking towards the circle. In Sgt. Eger’s experience, that indicated that they could be some kind of lookout to make sure no one is around. The officers observed the boys and it looked like they had something—although it was not clear what—in the middle of the circle, like they were showing somebody something; there was not a clear view into the circle, so it was even possible that someone was in the circle in trouble. The males were very interested in the middle of the circle, and one person in the middle of the circle was looking out as well. Sgt. Eger could not recall what, if anything, was being said by the boys. In the 250 report that said there were “actions indicative of a drug transaction,” Sgt. Eger explained that referred to the huddle and the lookout. The 250 report says that the area has a high incidence of this reported offense and Sgt. Eger said that it is one of the drug areas in the precinct. When Sgt. Eger was asked if she was suspicious about them possibly being part of the gang assaults that she originally stated in her interview or drugs, which was in the 250 report, Sgt. Eger said that she thought it was both, and officers always have it in the back of their minds.

The officers observed the boys for about 20 seconds. No officer took the lead in the decision to pull the car over and stop. They did not have a discussion about how to proceed when they got out of the car. Sgt. Eger could not recall who got out of the vehicle first. The officers approached the males to control and make sure no one had any weapons at that immediate time. They took their shields out and stated that they were the police. No one asked if the boys had “heavy metal objects.” One of the officers (Sgt. Eger could not recall which) said, “What’s going on here?” Sgt. Eger could not recall if anyone responded to that question. Sgt. Eger could not recall much conversation at all. Officer Liuzzi and Officer Juart did a quick frisk to touch the waistbands of the boys in the middle. Sgt. Eger did not instruct anyone to do the frisks, and the officers did them independently. To be “tactically safe,” the officers spread out among the boys. Sgt. Eger touched § 87(2)(b)’s back (identified through investigation) “just to maintain control” and to make sure no one turned around quickly. Sgt. Eger stated that § 87(2)(b) had “jerked around.” Sgt. Eger touched his waistband and did a quick weapon frisk. Sgt. Eger specifically touched the back of § 87(2)(b) because from her experience, that is where weapons are commonly concealed. Sgt. Eger does not recall which boy she touched. Sgt. Eger did not touch him anywhere else. Sgt. Eger did not find a weapon. Sgt. Eger did not touch anyone else. Sgt. Eger did not grab § 87(2)(b) by his jacket and say, “It’s not going to go your way,” and did not see any other officers do this. Sgt. Eger could recall the students saying anything when they were being frisked. Sgt. Eger could not recall which boys were frisked, but they focused on the members of the immediate circle, because of the unknown variables of their actions and behavior. Sgt. Eger stated that she did not speak to boys until after they were frisked, and therefore choosing to frisk one boy over another was not based on a matter of misguided answers from questioning. Sgt. Eger did not recall how many people specifically were frisked. Sgt. Eger thought it was likely that everyone in the circle would have been frisked. Everyone who was frisked had a 250 report prepared. Sgt. Eger did not search anyone and did not see any officers do this. When Sgt. Eger was shown that the 250 report stated that the reason for the frisk was furtive movements, she explained that a few boys moved around making jerking motions with their shoulders.

Eventually the boys said they were students who were waiting for § 87(2)(b). Once the officers saw there was no immediate danger, they asked

the boys for identification. Sgt. Eger did not collect IDs from anyone, the officers collected the IDs. Most of the boys produced identification. The boys that the officers frisked produced identification. The officers documented their names and dates of birth so they could write their 250 reports. Sgt. Eger could not recall where the officers got the dates of birth for the boys. The boys were all calm and they had no problems.

The officers entered into an “amicable” three-minute conversation about basketball. Sgt. Eger stated that she later heard that the boys were looking at a portable Playstation when they were in the circle, but she could not recall where she got that information from and she stated that she never saw it herself. The IDs were returned to the boys (Sgt. Eger could not recall who gave the IDs back) and the officers were getting into their car because they were finished. The officers told the boys they should be careful in that area because there’s “stuff” going on. As the officers were getting into the car, another car, possibly an SUV, pulled up and § 87(2)(b) (identified through investigation) came out who seemed irate (although he did not use any obscenities). Sgt. Eger was still outside of the vehicle and had not yet gotten in. § 87(2)(b) said, “Why are you harassing these kids?” Sgt. Eger asked § 87(2)(b) who he was, and he said that he was the coach and they were his kids. Sgt. Eger said she just wanted to know what they were doing on the property. Sgt. Eger explained that it looked like there was activity going on and the officers just wanted to speak to the boys. Everything was fine and no one was in trouble and once they knew they had to be let in for § 87(2)(b). § 87(2)(b) said okay, and got back in his car. The conversation lasted about 30 seconds.

The officers drove away and had gone about a block and noticed the SUV behind them, driving erratically, and flashing the lights. Sgt. Eger instructed her officers to pull over again because obviously he wanted to speak to her again. Sgt. Eger could not remember exactly what § 87(2)(b) said, but it was basically the same thing, § 87(2)(b) saying they were good kids, and Sgt. Eger explained, “Sir, I don’t know who they are until I know who I’m speaking to.” This conversation was not as long as the first one.

Officer Kenneth Juart (88th Precinct), Subject Officer

UF-250 Reports

UF-250 § 87(2)(b) for § 87(2)(b) (encl. 10b-d), occurred on January 15, 2007. The report lists the correct birthday for § 87(2)(b). The physical force used was, “Hands on subject.” It states that the circumstances leading to the stop were “Actions indicative of engaging in a drug transaction,” and additional factor is that the “area has high incidence of reported offense.” The basis for the frisk was, “furtive movements,” and the demeanor of the person stopped was described as calm. The period of observation was listed as “.30 minutes” (20 seconds) and the duration of the stop was 3 minutes.

UF-250 2 § 87(2)(b) for § 87(2)(b) (encl. 10e-f) occurred on January 15, 2007. This report was consistent with UF-250 § 87(2)(b) except that it did not list physical force used and did list one of the circumstances leading to the stop as, “Wearing clothes/disguises commonly used in commission of crime.”

UF-250 § 87(2)(b) for § 87(2)(b) [sic] (encl. 10g-h) occurred on January 15, 2006. The birthday listed is § 87(2)(b) but § 87(2)(b)’s birthday is § 87(2)(b). The report was entirely consistent with UF-250 § 87(2)(b).

UF-250 § 87(2)(b) for § 87(2)(b) (encl. 10i-j) occurred on January 15, 2007. The report was entirely consistent with UF-250 § 87(2)(b).

UF-250 § 87(2)(b) for § 87(2)(b) (encl. 10k-l) occurred on January 15, 2007. The report was consistent with UF-250 § 87(2)(b) except that it did not list physical force used.

Memo Book

Officer Juart had no entries in his memo book (encl. 10m-n) regarding this incident.

CCRB Interview

Officer Kenneth Juart, a white male who stands at 5’10” and weighs 180 pounds, was interviewed at the CCRB on April 18, 2007 (encl. 10o-q).

§ 87(2)(g) Officer Juart did not state that there might have been specific reports of incidents § 87(2)(b) and simply said that they were in a robbery and drug-prone location and there are numerous arrests for robberies and drugs in that location, although he himself has never made an arrest for robberies or drugs in that area, but thought perhaps members of his team had, although he could not recall. Officer Juart said they observed the boys standing in a circle in front of the bus stop and the officers said to each other in the car, "Let's investigate this." Officer Liuzzi, who was driving the car, made the decision to stop the car. Officer Juart noticed the boys looking at something and thought it was a phone or "something," Officer Juart could not recall if that is what the boys told him they were looking at, or if he ever saw what they were looking at. When Officer Juart was asked in his interview what the furtive movements were that were listed in the UF-250 for § 87(2)(b) Officer Juart stated that he was blading his body away and shifting from side to side on his feet. When Officer Juart was asked what furtive movements were being made by § 87(2)(b) Officer Juart stated that he was making the same movement, and that every single boy was standing in the circle blading his body and shifting from side to side on his feet. Officer Juart stated that the "actions indicative of a drug transaction" was simply the boys standing in a circle.

Officer Juart stated that when they said to the boys, "Police, what are you guys doing?" the boys said they were waiting for § 87(2)(b). Officer Juart stated that because the boys were all wearing big bulky jackets, he frisked around the waistbands of four boys, because he did not know if they had weapons, so he was doing it for the boys' safety as well as his own. When § 87(2)(b) were not being frisked they stood there and were calm. Officer Juart stated that he could not recall the details of the people he frisked, except that they were all black males, and each boy was about § 87(2)(b) years old and about 5'8"-5'9". The officers told the boys that they were searching for weapons. Officer Juart did not grab § 87(2)(b) and did not see anyone else. Officer Juart did not search anyone and did not observe if any other officers searched anyone or if the other officers even frisked anyone because he was focused on his own frisks.

Officer Juart collected the IDs and wrote down their names in his pad and told the boys they should always carry identification because, "if they get hit by a car or something no one is going to be able to identify them."

Officer Juart stated that they had driven halfway down the block when § 87(2)(b) arrived, but it was only after they had driven a couple of blocks that they noticed he was flashing his lights behind them. Officer Juart said that § 87(2)(b) expressed his displeasure with the handling of the situation and they explained to him what had happened. Officer Juart later stated that Sgt. Eger got out of the car and spoke to § 87(2)(b) and because he was inside the car, he did not know what happened in their conversation. When Sgt. Eger got back in the car she simply said that he was not happy that they stopped his team. Officer Juart said that they drove away and § 87(2)(b) stopped them a second time, and again only Sgt. Eger got out of the car, so Officer Juart did not know what she said.

**Officer Frank Liuzzi (88th Precinct), Subject Officer
Memo Book**

Officer Liuzzi had no entries in his memo book regarding this incident (encl. 10r-s).

CCRB Interview

Officer Liuzzi, a white male who stands at 6' and weighs 220 pounds, was interviewed at the CCRB on April 19, 2007 (encl. 10t-v).

§ 87(2)(g) Officer Liuzzi said that they were addressing robbery conditions and drug activity in the areas of § 87(2)(b), but it was not a specific assignment. § 87(2)(b) Officer Liuzzi could not say for sure if he had made arrests at this location and may have or may not have made arrests in the past year at § 87(2)(b).

Officer Liuzzi said that the boys were congregated together in a circle huddled in a corner with their hands out. Officer Liuzzi stated that the circle was unorganized and "didn't look right." Officer Liuzzi speculated

that someone could have been getting robbed or there could have been a drug transaction going on. Officer Liuzzi thought the “actions indicative of a drug transaction,” as listed in the 250 report referred to the fact that the boys were huddled in a corner of the bus stop in a circle with their hands out.

Officer Liuzzi, who was driving, made a U-turn and stopped the car. When he got out of the car he said, “I’m a police officer, everyone step away,” and went over to two boys and frisked them. Officer Liuzzi frisked two boys who were blading away from him and were fidgety and moving their shoulders and their entire bodies and started to proceed to move around. Officer Liuzzi did a frisk by the waistband without searching them. Officer Liuzzi was asked in his interview if the boys were wearing jackets and he said that they were and he did a pat right by the waist through the coat, to the best of his recollection. The two boys he frisked were compliant. Officer Liuzzi did not know what the other officers were doing.

Officer Liuzzi did discuss basketball with the boys but did not recall asking them any other questions. The officers never determined why the boys were in a circle. Officer Liuzzi stated that in the three 250 reports that documented the physical force used, hands on the body, referred to hands on the waistband.

POLICE DOCUMENTS

Fleet Services

The Fleet Services for license plate § 87(2)(e) (encl. 11a) shows that the car, which is a black 2003 Chevy Impala, is registered to the 88th Precinct.

Roll Call

The roll call for the 88th Precinct on January 15, 2007 (encl. 11b-c) shows that Sgt. Eger was the anti-crime supervisor and Officer Juart and Officer Liuzzi were members of the anti-crime team.

CRIMINAL CONVICTION HISTORY

§ 87(2)(b) and § 87(2)(b) are both minors and therefore any arrest record they might have would not be available to the CCRB. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CIVILIAN CCRB HISTORIES

This is the first complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 6a-e).

OFFICER CCRB HISTORIES

Sgt. Eger, during her 8-year tenure on the force, has had no cases substantiated against her (encl. 5a).

Officer Liuzzi, during his 6-year tenure on the force, has had no cases substantiated against him (encl. 5c).

Officer Juart, during his 6-year tenure on the force, has had one case in which charges were substantiated against him; in CCRB case #200511416, Officer Juart received command discipline A for abuse-vehicle search; a disposition of command discipline A for abuse-refusal to provide name/shield; a disposition of command discipline A was given for abuse-seizure of property; and a disposition of command discipline A was given for abuse-search (of person) (encl. 5b).

Conclusions and Recommendations

OFFICER IDENTIFICATION

Sgt. Eger stated in her CCRB interview that she was at the scene and was the supervisor at the scene. Although Sgt. Eger, Officer Liuzzi, and Officer Juart were consistent in that no one officer made the decision to stop the car and approach the boys, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Officer Juart and Officer Liuzzi both stated that Officer Liuzzi was the driver of the vehicle and Officer Juart was the passenger. § 87(2)(b) and § 87(2)(b) were all consistent in their statements that Officer Liuzzi was the bigger of the two male officers, which matches their pedigree information. § 87(2)(b) stated in his CCRB interview that it was the male passenger of the vehicle who searched him, and the physical description that § 87(2)(b) gave, of a white male officer who was 5'10" and 160 pounds (as opposed to Officer Liuzzi, who he described as a white male who was 6' and 180-200 pounds), matched Officer Juart's pedigree information (and the description of Officer Liuzzi matched Officer Liuzzi's pedigree), § 87(2)(g)

AGREED FACTS AND ISSUES IN DISPUTE

The following issues are **not in dispute**. Sgt. Eger, Officer Liuzzi, and Officer Juart did see § 87(2)(b) and § 87(2)(b) waiting in a bus stop outside § 87(2)(b) before 8am on January 15, 2007. Sgt. Eger, Officer Liuzzi, and Officer Juart did approach the boys, and the boys were frisked. The boys remained calm during the entire interaction. Once the officers found out the boys were § 87(2)(b). Near the end of the incident, § 87(2)(b) § 87(2)(b), did arrive at the scene and did drive after the officers and stopped their car to ask what had happened.

§ 87(2)(g)

ASSESSMENT OF EVIDENCE

§ 87(2)(b) and § 87(2)(b) the only two boys to give statements, both stated that they were standing with their backs against the wall of the bus stop the morning of the incident. Both boys saw the officers drive by and said that other boys noticed the car driving by as well. § 87(2)(b) stated that they were standing against the bus shelter because it was so cold outside. § 87(2)(b) did add that two boys were standing in front of them. Neither of the boys said that they were standing in a circle.

The officers all stated that when they drove by, the boys were standing in a circle. Sgt. Eger and Officer Juart said that the circle was so tight they could not see into the center to see what was going on; Officer Liuzzi said that the circle was disorganized and "didn't look right." Based on speculation, Sgt. Eger thought perhaps the boys had been looking at a game system, but also speculated that because the circle was so tight someone could have been in the middle in trouble; Officer Juart thought the boys might have been looking at a phone; Officer Liuzzi simply said that the boys had their hands out. § 87(2)(b) § 87(2)(g) stated in his interview that he was half-asleep listening to music and § 87(2)(b) said that he was talking about basketball; neither boy said that they or anyone else was looking at anything.

Sgt. Eger stated in her CCRB interview that they had had reports of gang assaults and robberies § 87(2)(b) around that period of time which factored into the stop; Officer Juart simply said that they were in a robbery and drug-prone location; Officer Liuzzi said that they were addressing robbery conditions and drug activity § 87(2)(b). The 250 reports stated that there were "actions indicative of a drug transaction," and did not mention robbery or gang activity. Sgt. Eger stated that there were two boys standing away from the circle who kept looking back, which was a sign of a drug transaction; Officer Juart stated that the sign they were engaging in a drug transaction is just that they were in a circle; Officer Liuzzi stated that it was because they were huddled in a corner of the bus stop in a circle with their hands out. Sgt. Eger also stated when shown a 250 report that mentioned some of the boys were wearing "clothes and disguises commonly used in the commission of crime," that it was referring to the fact that they were wearing jackets and layers; Officer Juart said it referred to wearing a big bulky jacket (note: the incident occurred on January 15th).

§ 87(2)(b) stated that when the officers got out of the car, the boys who were standing at the sidewalk started to move and Officer Liuzzi told them to stand still. § 87(2)(b) and § 87(2)(b) stated that the officers asked them who or what they were waiting for. Officer Juart also stated that they asked the boys what they were waiting for, and the boys told them they were waiting for basketball practice. However, Officer Liuzzi stated that they identified themselves as officers and approached the boys and started frisking them before asking them questions; Sgt. Eger said that one of the officers (she could not recall who) asked, “What’s going on here?” but did not recall if anyone responded; Sgt. Eger and Officer Liuzzi stated that they did not know who the boys were until they were frisking the boys.

All of the officers stated that they frisked members of the circle, although no one could remember specifically who they frisked or how many of the boys ended up being frisked because they each only knew what their own actions were and not anyone else’s. Sgt. Eger stated that she only frisked one boy, even though § 87(2)(b) stated that he was searched by her and both he and § 87(2)(b) stated that they saw her search § 87(2)(b). Officer Juart stated that he frisked four boys; Officer Liuzzi stated that he frisked two boys. The officers all stated that they frisked the boys because they were making furtive movements. § 87(2)(g) Sgt. Eger said that some of the boys were making jerking motions with their shoulders; Officer Juart stated that every single boy in the circle was blading his body and shifting from side to side on his feet; Officer Liuzzi said that the two people he frisked were blading away from him, were fidgety, moved their shoulders, moved their whole bodies, and started to proceed to move around. Yet all the 250s state that the boys were calm.

§ 87(2)(b) originally stated that Sgt. Eger frisked him and also went into his jacket pockets for a search; however, in a follow-up phone call with § 87(2)(b) he stated that Officer Juart frisked and searched him, § 87(2)(g) § 87(2)(b) stated that Officer Juart searched both the front pockets of his pants as well as his coat pockets. Officer Juart then searched around § 87(2)(b)’s bottom, causing § 87(2)(b) to jolt forward, and asked § 87(2)(b) if he was trying to be stupid. § 87(2)(b)’s statement was consistent with the statement his mother, § 87(2)(b) provided when she filed the complaint on his behalf, § 87(2)(g). Officer Juart denied searching anyone.

Both § 87(2)(b) and § 87(2)(b) stated that they saw Officer Liuzzi interact with § 87(2)(b) however, § 87(2)(b) said that he saw Officer Liuzzi grab § 87(2)(b) by the jacket and push him and § 87(2)(b) did not see this. As § 87(2)(b) did not participate in this investigation, it is unclear what actions occurred between Officer Liuzzi and § 87(2)(b).

Everyone was consistent that once the boys were frisked they were asked for ID. The officers stated that they had what they considered an amicable conversation § 87(2)(b); § 87(2)(b) said that Officer Liuzzi did ask questions about § 87(2)(b) as if he was trying to be friends with them.

Although all of the officers stated that they originally approached the boys because the circle they were in looked suspicious, none of the officers stated that anyone asked the boys why they were in a circle; in their interviews, the officers still did not know why the boys had allegedly been in a circle.

The officers were just finishing and getting in the car when § 87(2)(b) came by. § 87(2)(b) stated that the first time he stopped the officers, he spoke to Officer Liuzzi, who said that they were searching for steel because they boys were congregating. However, all of the officers said that only Sgt. Eger spoke to § 87(2)(b) and she said that she told § 87(2)(b) that it looked like there was illegal activity going on and they just wanted to speak to the boys. The officers stated that the second time only Sgt. Eger got out of the car and spoke to § 87(2)(b). However, § 87(2)(b) said that Officer Juart and Sgt. Eger got out of the car and that all of the officers spoke to him.

Allegation A: Sgt. Melissa Eger authorized the questioning of § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) Although only § 87(2)(b) and § 87(2)(b) participated in CCRB interviews, 250 reports were made for § 87(2)(b) and § 87(2)(b) as well, § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) said that they were standing against the bus stop and were not in a circle, but they were standing grouped together. The officers all stated consistently that the boys were standing in a circle, which they found suspicious, although the officers were not consistent about what they saw the boys doing in the circle. Even though neither Sgt. Eger nor Officer Liuzzi stated that they found out who the boys were before they began frisking them, § 87(2)(b) and Officer Juart did say that the officers asked the boys who they were when they got out of the car. The *NYPD Street Encounters Legal Issues* insert states that such a request for information only requires, “any articulable reason to approach. Suspicion of criminality is not required. However, the member of the service must be able to articulate a basis beyond mere whim and caprice.” (encl. 1a) § 87(2)(g)

§ 87(2)(g)

Allegation B: Sgt. Melissa Eger authorized the frisk of § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) Again, although only § 87(2)(b) and § 87(2)(b) were interviewed, 250 reports were made for § 87(2)(b) and § 87(2)(b) as well, stating that they were all frisked, which the officers all acknowledged in their CCRB interviews.

The officers stated in their interviews, as well as in the 250 reports, that the frisks were done because the boys were wearing bulky jackets and layers and the boys were making furtive movements. § 87(2)(g)

§ 87(2)(g) Sgt. Eger said that some of the boys were making jerking motions with their shoulders; Officer Juart stated that every single boy in the circle was blading his body and shifting from side to side on his feet; Officer Liuzzi said that the two people he frisked were blading away from him, were fidgety, moved their shoulders, moved their whole bodies, and started to proceed to move around. § 87(2)(g)

§ 87(2)(g)

Barry Kamins states in *New York Search & Seizure*, “The general rule regarding frisks... is that an officer must have reasonable suspicion to believe a suspect has committed a crime *and* a reasonable suspicion that the suspect is armed and dangerous” (encl. 2d). Police are also justified in their decision to frisk an individual where they observe a bulge on the person (encl. 2d), or observe a “flurry of furtive, suspicious conduct,” that gives the officers reasonable suspicion to believe that an individual may be concealing a weapon, notwithstanding possible innocent explanations. *People v. Brandon*, 42A.D.3d 331 (1st Dept. 2007) (encl. 4b). Here, the officers could not articulate any bulge, or any furtive, suspicious conduct.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Sgt. Melissa Eger searched § 87(2)(b)

Sgt. Eger stated in her interview that she only frisked one boy; she touched him on the back to maintain control, touched his waistband, and did a quick weapon frisk but nothing more. § 87(2)(b) initially stated in

his CCRB interview that Sgt. Eger also put her hands inside his coat pockets but not his pants pockets and although § 87(2)(b) had a backpack, she did not search the backpack. However, in a follow-up phone call with § 87(2)(b) he stated that Officer Juart was the officer who frisked and searched him and he had no physical interaction with Sgt. Eger. § 87(2)(g)

Allegation D: Sgt. Melissa Eger searched § 87(2)(b)

§ 87(2)(g)

Allegation E: PO Kenneth Juart searched § 87(2)(b)

§ 87(2)(b) stated that he was both frisked and searched by the male officer who was a passenger in the unmarked vehicle, Officer Juart. § 87(2)(b) provided a consistent, detailed account of what happened immediately following the incident and in his subsequent interviews with this investigator.

§ 87(2)(b) stated that Officer Juart told him to take his hands out of his pockets and then searched his pants and coat pockets. Officer Juart patted down § 87(2)(b) and then searched around his buttocks, which caused him to jolt forward from the wall of the bus stop. This caused Officer Juart to ask § 87(2)(b) “Are you trying to be funny or stupid?” The complaint that § 87(2)(b) s mother, § 87(2)(b) filed on his behalf was entirely consistent with the statement he gave in his CCRB interview, § 87(2)(g)

Officer Juart admitted that he frisked four boys around their waistbands, but that he did not search anyone.

§ 87(2)(g) (1) he said that when the officers first observed the boys, every single boy was “blading” his body and shifting from side to side at the same time; § 87(2)(g)

(2) he stated that he was so busy with his own frisks he could not see if other officers searched anyone, § 87(2)(g)

(3) he determined that wearing bulky jackets in January was suspicious behavior.

§ 87(2)(g)

§ 87(2)(g)

Allegation F: PO Liuzzi used physical force against § 87(2)(b)

Allegation G: PO Liuzzi searched § 87(2)(b)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: